

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12948 OF 2018

M/s. Ambai Developers and Others	...Petitioners
vs.	
Ganpati Panchaytan Sansthan Trust, Sangli and Others	...Respondents

Mr. A.M. Kulkarni, for the Petitioners
Mr. U.R. Mankapure, for Respondent No. 1

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

P.C.:

. Heard Mr. Kulkarni, learned counsel for the Petitioners and
Mr. Mankapure, learned counsel for the Respondent.

2. This Petition has been instituted by the original Defendant
Nos. 1 to 4 in Special Civil Suit No. 104 of 2015 to challenge the
order dated 6th October, 2018 made by the learned trial Judge.

3. In the impugned order the learned trial Judge has
commented upon the conduct of the Petitioners. The comments are
totally proper in the facts and circumstances of the present case.
In fact, this Petition is required to be dismissed with exemplary
costs.

4. The operative portion of the impugned order dated 6th October, 2018 reads thus :

- “1. The application is allowed.
2. The defendant nos. 1 to 4 are hereby directed to furnish the security of sum of Rs. 8,00,00,000/- (Rupees Eight Crores) within 15 days from the date of order.
3. Costs in cause.”

5. To begin with Mr. Kulkarni, the learned counsel for the Petitioner made extremely bold submission that since there is already a temporary injunction granted by the learned trial Court by orders dated 9th June, 2015 and 6th May, 2016 restraining the Petitioners from creating any third party interest in the suit properties 1(B) and 1(C), there was no justification for making the impugned order in exercise of powers under Order 38 Rule 5 of CPC. In support of this reliance was placed on the ruling of the Supreme Court in **V.G. Quenim and Another vs. Bandekar Brothers (P) Ltd., (2002) 10 Supreme Court Cases 513.**

6. In order to depict the fairness, this Court was also further informed that the Petitioners have preferred Appeal From Order against the orders of injunction dated 9th June, 2015 and 6th May, 2016 before Appeal Court and as such Appeals would be

withdrawn so that the injunction attains finality pending suit. Since such submission at a first blush was found to be sound and even fair, this Court called upon the learned counsel for the Respondents to defend the impugned order.

7. Mr. Mankapure, the learned counsel for Respondents pointed out that the learned trial Judge in the impugned order has recorded that the Petitioners have already alienated the suit property in respect of which there is temporary injunction. He also pointed out the pleadings of the Petitioners in their written statement wherein they claimed that the suit properties “*are not in existence*”.

8. Mr. Mankapure submits that this means that on one hand the Petitioners have already flouted the injunction order by alienating the suit property and in fact on the basis of injunction order being in existence, seek to avoid compliance with the direction in the impugned order. He submits that the conduct of the Petitioners is almost unfair and therefore this Petition should be dismissed with exemplary costs.

9. The records indicates that the Petitioners claim to have already alienated the suit property though, the contention of Mr. Kulkarni was that the impugned order be set aside because the injunction objects the Petitioners not to alienate the suit property. Even Appeal against the injunction order was allowed to the withdrawn. The least that was expected from the Petitioners in this matter is to be candid with this Court and to make this position quite clear at the outset. Instead, at the very outset a very bold statement was made that since there is already an injunction restraining the Petitioners from alienating the suit property, the direction in the impugned order for furnishing security was not warranted. The submission in the facts, was entirely misconceived. The decision in the case of **V.G. Quenim** (supra) can obviously have no application in the present situation. The Petitioners wish have the best of both the worlds, relying entirely on their unfair conduct.

10. The learned trial Judge has in fact observed that the conduct of the Petitioners is *malafide* and considering the approach of the Petitioners before this Court, such observation deserves endorsement. Mr. Kulkarni, however submits that it is the

Respondents who are trying to create mis-impression in the matter. However, when confronted with the defence raised by the Petitioners themselves in their own written statement and the observations in the impugned order on the aspect of alienation of the suit property, Mr. Kulkarni was unable to elaborate upon his submission that it is the Respondents who were creating some mis-impression in the matter.

11. Mr. Kulkarni, then referred to the ruling of the Hon'ble Supreme Court in the case of ***Raman Tech & Process Engg. Co. and Anr. vs. Solanki Traders, (2008) 2 Supreme Court Cases 302*** to submit that even otherwise no case was made out to make out a drastic and extraordinary order under Order 38 Rule 5 of Code of Civil Procedure (CPC). He submits that there was no material on record to indicate that Petitioners were alienating the property in order to defeat any eventual decree that may be made in the suit.

12. Taking into consideration the conduct of the Petitioners, this Petition is required to be dismissed even without going into the merits of the matter. However, this Petition is dismissed not merely

on the ground that the conduct of the Petitioners was unfair to the Court, rather this Petition deserves to be dismissed on merits as well. This is because the learned trial Judge has taken into consideration the provision of Order 38 Rule 5 of CPC and only upon satisfaction that the parameters thereof were existent made the impugned order.

13. The material on record does suggest that the Petitioners may go to any extent to avoid the execution of the decree made in the suit. In the fact and circumstances of the present case, it can not be said that the impugned order has any drastic or extraordinary consequences in so far as the Petitioners are concerned. The impugned order merely requires the Petitioners to furnish security in an amount of Rs. 8 Crores. Looking to the propensity of the Petitioners to make misleading statement or take up false defences, it appears that the impugned order is quite mild in so far as the Petitioners are concerned.

14. The impugned order is quite consistent with the principles laid down by the Supreme Court in the case of **Solanki Trades** (supra). There is no error of jurisdiction pointed out in making to

the impugned order. There is no illegality in the impugned order so as to warrant interference in the exercise of supervisory jurisdiction.

15. To the query from the Court as to whether the Petitioners will withdraw the Appeal against the injunction orders dated 9th June, 2015 and 6th May, 2016 as proposed at the initial stage of arguments, Mr. Kulkarni states that offer to withdraw the Appeal was contingent upon success in the present Petition. He resolutely states that the Petitioners will not withdraw the Appeals against the injunction order dated 9th June, 2015 and 6th May, 2016. Again this reflects of the conduct of the Petitioners, since it is necessary to presume that this stance of Mr. Kulkarni is on the basis of instructions from the Petitioners, at the outset, there was no statement that the Appeals would be withdrawn subject to the success in this Petition. Obviously, the Petitioners cannot put such conditions to the Court. This however, reflects upon the conduct of the Petitioners.

16. This Petition is entirely misconceived and is required to be dismissed with exemplary costs. The Petition is accordingly

dismissed with costs of Rs. 50,000/- payable within four weeks from today in favour of the Respondents.

17. The costs either be directly paid or deposited before the trial Court within four weeks from today. The trial Court to ensure that such costs are recovered from the Petitioners i.e. Defendant Nos. 1 to 4 in the suit.

18. All concerned to act on basis of authenticated copy of this order.

19. At this stage, Mr. Kulkarni, learned counsel for the Petitioners seek for extension of ad-interim order granted by this Court on 2nd November, 2018.

20. Looking to the conduct of the Petitioners and the fact that there is no error in the impugned orders, this is not a fit case for continuing of the interim order. The interim order is accordingly vacated.

(M. S. SONAK, J.)